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No. 266

IN THE
Supreme Court of the United States

October Term, 1958

STEPHEN J. KOVRAK,
Appellant

v.

S. REGEN GINSBURG, Chairman, ROBERT F. LEHMAN, GEORGE P. WILLIAMS, III, Individually and as members of the Committee on Unauthorized Practice of the Law, acting for, on behalf of and by authority of the Philadelphia Bar Association,
Appellees

On Appeal from the Supreme Court of Pennsylvania, Eastern District.

BRIEF IN OPPOSITION TO MOTION TO DISMISS APPEAL

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BRIEF IN OPPOSITION TO MOTION TO DISMISS

Appellant, pursuant to Rule 16 of the Revised Rules of this Court, opposes appellees' Motion to Dismiss his appeal.

I. The Motion To Dismiss Incorrectly States the Case

The Motion states that appellant claims the right to practice law generally in Pennsylvania. Appellant has never claimed this, as an examination of the record will show. (See Appellant's Answer, Jurisdictional Statement, page 32. See Question 2 in Appellant's Brief on appeal to Supreme Court of Pennsylvania, *ibid.*, page 57.) Appellant claims the right to practice in the federal district court to which he is admitted, with the necessary incident of having an office therefor in the city where that court is located.

The Motion on page 2 thereof states: "Nowhere in the record does it appear that appellant in any way attempted to qualify the scope of his activities as an attorney in Philadelphia County." The record shows this statement to be incorrect. (See Jurisdictional Statement, pages 9 to 11.)

II. The Motion To Dismiss Neither Shows Nor Argues Insubstantiality of Federal Questions Presented

The Motion fails to show any lack of a substantial federal question. It does not state that the federal questions presented by appellant lack substantiality; rather, it argues that the substantial federal questions which appellant has presented have already been settled. It thus as-

sumes as already resolved in its favor the very point to be decided, while doing nothing to overcome appellant's arguments as to substantiality. (See Jurisdictional Statement, pages 18 through 25 and 67 through 70.) For example:

On page 2 of the Motion this statement is made: "[*Appellant*] *actually tried an accident case in the federal district court.*" This is the very point at issue on this appeal: is it not precisely his admission to that court which gives appellant the right to try an accident case—or any other case—in the *federal district court?* This statement highlights the very view against which appellant contended in the Court of Common Pleas and in the Pennsylvania Supreme Court, namely, the view that his federal license is no true license and in fact merely a species of state license.

On page 3 of the Motion this statement is made: "In any event, it is clear from the decisions of this Court that the admission of attorneys to practice is subject to state control". Appellant's very contention is that admission of attorneys to practice *in the federal courts* is not subject to state control. As to this precise point, the cases cited by appellees on page 3 of the Motion are not authority.

Similarly, appellees on pages 4 through 7 utilize the form of a Motion to Dismiss not to present arguments showing lack of substantiality but to argue the very merits of the case.

III. The Motion To Dismiss Erroneously States That the Pennsylvania Statute Is Not Directly Involved

This statute (Act of April 28, 1899, as amended by Act of April 24, 1933, P.L. 66, Sec. 1, 17 P.S. 1608) is directly involved. In fact, it constituted the basis of appellees'

Complaint (see Jurisdictional Statement, page 26) which alleged as its ninth paragraph: "9. The defendant has practiced law in violation of the Act of April 28, 1899, P.L. 117, Section 1, as amended (17 P.S. 1608)." The constitutionality of this statute as applied to appellant was attacked by him in the Court of Common Pleas and upon appeal to the Pennsylvania Supreme Court, and both of those courts held that the statute applied to appellant and ruled specifically upon its constitutionality.

IV. The Questions Sought To Be Reviewed Were Both Raised in and Passed Upon by the Pennsylvania Supreme Court

In appellant's Brief on appeal to the Supreme Court of Pennsylvania his Question 2 in "Statement of the Questions Involved" was: "May a State prevent a person from practicing law before a Federal Court within that State unless he has been admitted to practice before the courts of that State?" (Jurisdictional Statement, page 57.) The Court of Common Pleas specifically ruled to the contrary. The Supreme Court of Pennsylvania affirmed. This is the precise question appellant raises in this Court. In order to establish a supposed difference between questions raised in the State courts and those raised on this appeal, the Motion to Dismiss resorts to a wholly artificial division of "practice of law" into two elements: (a) the trying of cases (b) the having of an office therefor. Appellees themselves refute this wholly unreal distinction in their own Complaint, Paragraph 8 of which alleges that appellant "has illegally and wrongfully engaged in the practice of law", immediately then particularizing activities allegedly constituting the same in subparagraphs. Subparagraph

"(e)" specified that the fact that appellant "maintains a law office" constituted the practice of law.

Conclusion

It is unfortunate that the Motion to Dismiss devotes itself to refuting arguments which appellant has never advanced and seeks to characterize him as an unauthorized practitioner. This is unfortunate since it involves not only the hitherto unassailed good name of an individual who achieved membership at the bar pursuant to bar examination and character examination, and who, in Philadelphia, the federal court has elected to designate by the name "attorney". This is unfortunate even more importantly because it beclouds the ultimate issue in this case, which is: *have the United States district courts independent power to admit attorneys to practice therein, or, as appellees maintain, does this power reside in the states?*

It is respectfully urged that the Motion to Dismiss be denied.

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